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be waived by consent. The weight of authority too, slightly inclines to this view in the few jurisdictions where the subject has come up. *State* v. *Groves*, 119 N. C. 822; 6 ENC. PL. & PR. 456. Nevertheless, even the courts which allow the demurrer look with disapproval on this "unusual and antiquated practice." Indeed there is nothing to recommend it in preference to the less technical motion before the court. And there are, on the other hand, several disadvantages in its use; for the demurrant waives the benefit of any exceptions taken to prior rulings of the court, and is debarred from introducing more evidence if his demurrer is overruled.

FALSE WARRANTIES BY AN INFANT IN A POLICY OF INSURANCE. — The confusion which may result from the undiscerning use of a term to which radically different meanings are attached in different branches of the law, is forcibly illustrated in a recent Rhode Island decision. An infant in his application for insurance to the defendant life insurance company made a false statement which was incorporated as a warranty in the policy subsequently issued. In a suit by the beneficiary to collect the policy the company contended that the falsity of the warranty rendered the contract void. It was held, however, that the breach of such a warranty by an infant constituted no defence since by allowing it, the court would in effect be making the infant's contract binding upon him. *O'Rourke* v. *John Hancock Mut. Life Ins. Co.*, 50 Atl. Rep. 834. The court arrives at this conclusion through a consideration of various classes of cases, such as false warranties in the sale of chattels, and promissory notes given in payment for things not necessaries: cases in which the infant is free to avoid his contracts. Particular reliance was placed on a decision which refused to allow a defendant employer in a suit by a minor for wages, to set-off the damages caused by the minor's breach of promise to give notice before quitting. *Derocher* v. *Continental Mills*, 58 Me. 217. No case precisely in point was cited in the opinion, nor has any been discovered in the reports.

In all of the cases relied upon by the court, it will be seen that the infant had made some promise, and in accordance with the old common law rule was allowed to avoid it. A warranty, however, does not in all branches of the law include a promise. In a deed, a warranty comprises a representation as to an existing fact as well as a promise. *Bush* v. *Cooper's Adm.*, 18 How. 82. In a charter party, a warranty is a promise which operates as a condition precedent; its breach gives the other party a right to refuse to go on with the contract, or waiving it as a condition, he may sue upon it as a promise. *Behn* v. *Burness*, 3 B. & S. 751. A warranty in sales of personal property is strictly not a condition upon which the contract is based, but a collateral undertaking — a promise, as is shown by the fact that a consideration is necessary to support it. BIDDLE, WAR. IN SALE OF CHATS., § 4. In a contract of insurance, on the other hand, warranty is used as synonymous with condition, and is construed as a "condition precedent, which must be complied with to the minutest detail, or else the contract is rendered void." BLISS, LIFE INS., § 34. A policy of insurance being a unilateral contract, the only promises it contains are the promises of the insurer. The warranties constitute the basis or condition upon which the insurer assumes the liability.

Had the court in the principal case recognized the established construction of warranties in policies of insurance as being essentially conditions precedent, and not promises, it must logically have allowed a breach of warranty as a valid defence. Unfortunately, attempting to avoid the imaginary evil of making an infant's contracts binding upon him, the court fell into the real evil of forcing upon the insurer a contract that in fact he did not make.

THE EFFECT OF MERGER UPON MORTGAGE DEBTS. — When the equity of redemption of mortgaged property unites in one person with the legal title, it is said that, unless a contrary intention express or implied is shown, the interests merge, and the mortgage debt is thereby extinguished. 2 WASH., REAL PROP., 4th ed., 196. Without discussing what state of facts are essential to the creation or prevention of merger, the question naturally arises, is extinction of the debt a necessary consequence? A recent Illinois case answers this question positively in the affirmative. The purchaser of an estate subject to a mortgage bought in the note and the mortgage securing it. He then sued upon the note, but was not allowed to recover, on the ground that there had been a merger of interests and that consequently the debt had been extinguished. *Hester* v. *Frary*, 17 Chic. L. J. 45. Although this decision is in accord with the general law, there has been but little discussion of the point. It is common knowledge that the holder of a note secured by a mortgage has two distinct rights, one against the land and the other against the mortgagor; and it is even held that the first may exist when the latter has been barred. *Hanna* v. *Wilson*, 3 Gratt. (Va.) 243. Why, then, may not the personal liability exist without the mortgage security? It is conceived that the solution may be found in the laws of subrogation. When one who is collaterally bound as surety or indorser to pay a mortgage debt pays it, he is subrogated to the rights of the payee. SHELDON, SUBROG., § 3. In the principal case, for example, if there had been no merger of the equitable and legal interests in the security, the defendant on paying the note would have been entitled to hold the mortgage until redemption. The merger, however, is said to prevent the separation of the mortgage interest from the fee in which it has merged. Consequently, if the defendant were to pay the note, he would be left without the security ordinarily incidental to the payment of a mortgage note. To prevent such a result, the debt is said to be extinguished. It is suggested, however, that the debt is not extinguished, but that, the right of foreclosure against the land being gone, the personal liability only up to the value of the premises is wiped out. Without straining the doctrine of merger, this would protect the mortgage creditor in those cases where he chiefly needs protection, *i. e.*, where the value of the premises is less than the amount of the debt. If there has been a merger accompanied by extinguishment of the debt it results that the mortgagee, having prudently supplied two strings to his bow, is forced to rely on one, and that the broken one. See *Dickason* v. *Williams*, 129 Mass. 182. Inasmuch as the defence of merger is in history and nature equitable, it seems that in justice it should be limited in effect to the value of the premises. Had there been foreclosure the debtor would have been personally liable for the amount not covered by the proceeds